

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #12	CCRB Case #: 201907049	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/03/2019 12:19 AM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 2/3/2021	EO SOL 9/20/2021	
Date/Time CV Reported Sat, 08/03/2019 8:52 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/09/2019 11:02 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Vincent Dandraia	27309	957510	073 PCT
2. SGT Michael Nocerino	00491	937192	073 PCT
3. An officer			073 PCT
4. POM Luis Fernandez	22932	953854	073 PCT
5. POM Keith Stark	03636	961325	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Mahon	23144	949240	073 PCT
2. POM Joseph Sicari	18517	959230	073 PCT
3. LT Thomas Turner	00000	926232	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Vincent Dandraia	Abuse: Police Officer Vincent Dandraia frisked § 87(2)(b)	
B.SGT Michael Nocerino	Abuse: Sergeant Michael Nocerino frisked § 87(2)(b)	
C.SGT Michael Nocerino	Abuse: Sergeant Michael Nocerino searched § 87(2)(b)	
D. An officer	Abuse: An officer frisked § 87(2)(b)	
E.POM Vincent Dandraia	Abuse: Police Officer Vincent Dandraia searched the vehicle in which § 87(2)(b) was an occupant.	
F.POM Luis Fernandez	Abuse: Police Officer Luis Fernandez searched the vehicle in which § 87(2)(b) was an occupant.	
G.POM Keith Stark	Abuse: Police Officer Keith Stark searched the vehicle in which § 87(2)(b) was an occupant.	

## **Case Summary**

On August 3, 2019, a 911 operator called the IAB Command Center and connected § 87(2)(b) who filed this complaint, which was subsequently received at the CCRB on August 9, 2019, on behalf of himself, his friend, § 87(2)(b) and § 87(2)(b) girlfriend, § 87(2)(b).

On August 3, 2019, at approximately 12:19 a.m., at § 87(2)(b) in Brooklyn, officers, including PO Vincent Dandraia, Sgt. Michael Nocerino, PO Luis Fernandez, PO Keith Stark, PO Brian Mahon, PO Joseph Sicari, and Lt. Thomas Turner, all from the 73<sup>rd</sup> Precinct, stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. After the vehicle's occupants exited, PO Dandraia frisked § 87(2)(b) (**Allegation A -Abuse of Authority: Frisk, § 87(2)(g)**), Sgt. Nocerino frisked (**Allegation B -Abuse of Authority: Frisk, § 87(2)(g)**) and searched (**Allegation C -Abuse of Authority: Search (of person), § 87(2)(g)**) § 87(2)(b).

An officer allegedly frisked § 87(2)(b) (**Allegation D -Abuse of Authority: Frisk, § 87(2)(g)**), and PO Dandraia (**Allegation E -Abuse of Authority: Vehicle search, § 87(2)(g)**), PO Fernandez (**Allegation F -Abuse of Authority: Vehicle search, § 87(2)(g)**), and PO Stark (**Allegation G -Abuse of Authority: Vehicle search, § 87(2)(g)**) all searched the vehicle.

As a result of the incident, § 87(2)(b) was issued a summons for an inoperative license plate light, and § 87(2)(b) was issued a summons for possession of marijuana.

Video footage obtained in this case was recorded by PO Fernandez (Board Review 17 and 18), PO Sicari (Board Review 19), PO Dandraia (Board Review 20), Sgt. Nocerino (Board Review 03), PO Stark (Board Review 21), Lt. Turner (Board Review 05), and PO Mahon (Board Review 22) on their Body-Worn Cameras (BWCs).

## **Findings and Recommendations**

**Allegation (A) Abuse of Authority: Police Officer Vincent Dandraia frisked § 87(2)(b)**

**Allegation (B) Abuse of Authority: Sergeant Michael Nocerino frisked § 87(2)(b)**

**Allegation (C) Abuse of Authority: Sergeant Michael Nocerino searched § 87(2)(b)**

**Allegation (D) Abuse of Authority: An officer frisked § 87(2)(b)**

**Allegation (E) Abuse of Authority: Police Officer Vincent Dandraia searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (F) Abuse of Authority: Police Officer Luis Fernandez searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (G) Abuse of Authority: Police Officer Keith Stark searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that on August 3, 2019, at approximately 12:19 a.m., officers stopped a vehicle containing § 87(2)(b) and § 87(2)(b). During the vehicle stop, PO Dandraia frisked § 87(2)(b), Sgt. Nocerino frisked and searched § 87(2)(b), and PO Dandraia, PO Fernandez, and PO Stark searched § 87(2)(b)'s vehicle.

§ 87(2)(b) stated (Board Review 01) that he knew § 87(2)(b), the registered owner of the vehicle he drove, to be a cigarette smoker, and he did not know whether § 87(2)(b) smokes marijuana. § 87(2)(b) had not smoked marijuana on the date of this incident, and he did not know whether § 87(2)(b) or § 87(2)(b) had done so. As § 87(2)(b) spoke with PO Dandraia during the vehicle stop, PO Dandraia told him that the vehicle “smell[ed] like weed,” which § 87(2)(b) denied. An unidentified officer frisked § 87(2)(b) by patting the exterior of her

clothing.

Although § 87(2)(b) and § 87(2)(b) each failed to appear for a scheduled interview appointment and became unresponsive to subsequent contact attempts, § 87(2)(b) stated in a telephone statement (Board Review 02) that Sgt. Nocerino recovered from him marijuana that had been “rolled up” but “not sparked” and “not smoked.” § 87(2)(b) stated in a telephone statement (Board Review 02) that officers instructed the vehicle’s occupants to exit after making statements about an odor in the vehicle. § 87(2)(b) denied interacting with any officers and denied that any officer frisked her.

In the BWC footage Sgt. Nocerino recorded, which is 23m03s in length, at the 00m57s mark, Sgt. Nocerino asks, “You guys smoking?” and speaks with § 87(2)(b). § 87(2)(b) says, “Earlier.” Sgt. Nocerino says, “What was that, sir?” § 87(2)(b) says something inaudible, and Sgt. Nocerino says, “You smoked earlier?” § 87(2)(b) says something inaudible, and Sgt. Nocerino says, “Okay. No problem.” Sgt. Nocerino requests that § 87(2)(b) exit the vehicle, which he does. Sgt. Nocerino says, “No weapons, anything like that, brother?” as § 87(2)(b) raises his arms and Sgt. Nocerino’s BWC moves closer to his body. § 87(2)(b) says, “Nah. Coins, fanta in my pocket.” Sgt. Nocerino asks, “You got weed in here? I smell it.” § 87(2)(b) says, “Yeah, I think so. Yeah.” Sgt. Nocerino says, “Alright, you got a little bit of weed? No big deal, man.” Sgt. Nocerino instructs § 87(2)(b) to turn around and spread his legs.

In a sixteen-second portion of BWC footage recorded by PO Fernandez (Board Review 04), § 87(2)(b) exits § 87(2)(b)’s vehicle and walks to its rear, a process that lasts approximately five seconds. No officer’s physical contact with § 87(2)(b) can be seen during this time, nor does she take any actions that appear to be a response to being touched. For the remainder of § 87(2)(b)’s time outside the vehicle, in the BWC footage Lt. Thomas Turner recorded, from the 01m25s to 05m30s mark, § 87(2)(b) remains in view, and no officer appears to make any physical contact with her.

PO Dandraia stated (Board Review 06) that he frisked § 87(2)(b) due to his detecting the odor of marijuana in the vehicle, “for [his] safety” in ensuring that § 87(2)(b) was not armed, and for no other reason. PO Dandraia searched the vehicle due to his detecting the odor of marijuana emanating from its interior, due to marijuana being recovered from § 87(2)(b) pocket, and for no other reason. PO Dandraia had received, by being “randomly chosen,” narcotics training in 2016 regarding how to test marijuana and identify it by features such as its odor. As an officer, PO Dandraia had dealt with the odor of marijuana “all the time” in that he had issued approximately 100 to 150 summonses regarding marijuana, with an average of approximately 100 weekly encounters involving marijuana. PO Dandraia had experienced the odor of both unlit and lit marijuana and thought that the odor of lit marijuana, the odor he detected in § 87(2)(b)’s vehicle, was “stronger.”

Sgt. Nocerino stated (Board Review 07) that he frisked and searched § 87(2)(b) because he had acknowledged smoking marijuana and possessing it, because he detected the odor of marijuana emanating from § 87(2)(b)’s vehicle, and for no other reason. Sgt. Nocerino recognized the odor of marijuana from both his training and experience: his training consisted of his becoming qualified in marijuana field testing, and his experience consisted of his performing numerous arrests related to marijuana in both his 15-year total tenure with the NYPD and his seven-year period working in Street Narcotics duties. Sgt. Nocerino’s training consisted of seeing different forms of marijuana, seeing substances that appeared to be marijuana, detecting what was marijuana, and smelling marijuana in both unburnt and burnt forms. During this incident, Sgt. Nocerino attributed the odor he detected to that of burnt marijuana.

PO Stark stated (Board Review 08) that he searched § 87(2)(b)'s vehicle due to his being informed by other officers that they had detected the odor of marijuana inside it and for no other reason.

§ 87(2)(g)

Upon detecting the odor of marijuana in a vehicle, officers may search the vehicle's occupants and the vehicle itself. People v. Chestnut, 43 A.D.2d 260 (1974) (Board Review 09).

§ 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 10).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 11).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 12).
- PO Dandraia has been a member-of-service for four years and has been a subject in five CCRB complaints and fourteen allegations, none of which were substantiated. § 87(2)(b)
- Sgt. Nocerino has been a member-of-service for fourteen years and has been a subject in twelve CCRB complaints and 38 allegations, none of which were substantiated. § 87(2)(b)
- PO Fernandez has been a member-of-service for six years and has been a subject in seven CCRB complaints and thirteen allegations, none of which were substantiated. § 87(2)(b)
- PO Stark has been a member-of-service for three years and has been a subject in four CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(b)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of December 6, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 13).
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- According to OCA, § 87(2)(b) has no history of convictions in New York City (Board Review 15).
- According to OCA, § 87(2)(b) has no history of convictions in New York City (Board Review 16).
- As of December 19, 2019, the Kings County Criminal Court did not find on file summons number § 87(2)(b) which was issued to § 87(2)(b) during this incident.
- As of December 19, 2019, the disposition of summons number § 87(2)(b) which was issued to § 87(2)(b) during this incident, was not available.

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date